***THE HON'BLE SRI JUSTICE A.GOPAL REDDY**

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+ WRIT PETITION No. 10567 of 1996

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%Dated 18-01-2005

State Bank of Hyderabad Rep. by its Chief Manager,
Premises Department, HO:Gunfoundry,
Hyderabad.

..... PETITIONER

VERSUS

$1 Government of Andhra Pradesh, Rep. by The Commissioner,
Survey, Settlement and Land Records, Andhra Pradesh,
Hyderabad.

.....RESPONDENT

! Counsel for Petitioner No.1:MR.K.GOPALA KRISHNA MURTHY,

ADVOCATE

^Counsel for Respondent: G.P. FOR REVENUE

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>HEAD NOTE:

? Cases referred

AIR 1970 Madras 148

2 AIR 1990 SC 485

3 AIR 1962 SC 1217

4 AIR 1966 Mad. 36

5 AIR 1961 SC 787

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 10567 of 1996

Between:

State Bank of Hyderabad Rep. by its Chief Manager,
Premises Department, HO:Gunfoundry,
Hyderabad.

..... PETITIONER

AND

Government of Andhra Pradesh, Rep. by The Commissioner,
Survey, Settlement and Land Records, Andhra Pradesh,
Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ more in the nature of a Writ of Certiorari or any other appropriate Writ

order, orders or direction and to quash the order of the office of he Commissioner of Survey, Settlement and land records, Andhra Pradesh Hyderabad No. CSS & CR's Ref No.U3/413/95, dt:10-4-1995 returning the Revision Petitioner against the order of the District Registrar, Karimnagar Memo No.G1/5339, dt:20-1-1995 adjudicating the lease deed Under Section 32 Indian Stamps Act and direct the Respondent to dispose the revision petition on merits.

Counsel for the Petitioner: Mr.K.Gopala Krishna Murthy,Advocate.

Counsel for the Respondent No.: Govt. Pleader for REVENUE

The Court made the following:

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.10567 of 1996

Order:

This writ petition raises a point of some significance in relation to proper construction and interaction of Section 56 of Indian Stamp Act, 1899 (for short 'the Act') which reads thus:

Control of, and statement of case to, Chief Controlling Revenue Authority:

> (1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to section 26- shall in all cases be subject to the control of the Chief Controlling Revenue-authority.

(2) If any Collector, acting under section 31-,section 40-or section 41-, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

Since the revision was filed against the order passed by the District Registrar under Sections 31 and 32 of the Act, it is necessary to resolve the controversy on true interpretation of above sections, which provides:

Section 31 Adjudication as to proper stamp

1. When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment the instrument is chargeable.

2. For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly: Provided that-

a. no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

SECTION 32 Certificate by Collector

(1) When an instrument brought to the Collector under section 31- is, in his opinion, one of a description chargeable with duty, and-

a. the Collector determines that it is already fully stamped, or

b. the duty determined by the Collector under section 31-, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped: Provided that nothing in this section shall authorise the Collector to endorse-

a. any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

b. any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or

(c) any instrument chargeable with a duty not exceeding ten naye paise, or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

The facts, which give rise to controversy, in nutshell are as under:

The Petitioner-Bank was allotted a plot by the Fertilizer Corporation India Limited, Ramagundam Division by way of lease for a period of 20 years for establishing its branch at Fertilizer City and renewable thereafter. The lease agreement between the Company and the Petitioner—Bank provided the Bank to pay annual rent of Rs.8,320/- per acre. On such lease being obtained, the Bank shall raise its

permanent construction by itself for carrying on its banking business in the Fertilizer City and in case it discontinues its business the building constructed by it shall vest with the Fertilizer Corporation of India. Accordingly, the draft lease, terms and conditions settled between the parties were submitted to the District Registrar, Karimnagar & Collector under Section 31 of the Act to ascertain the stamp duty payable towards the lease deed.

The District Registrar, Karimnagar endorsed the certificate of adjudication of the lease deed under Section 32 of the Act, which reads thus:

> "This document is a lease chargeable with a stamp duty of Rs.1,67,575/- as per Art.31(a)(iv)(c) and (d) of Schedule I-A to the Indian Stamp Act."

Against the said order petitioner—Bank submitted a revision petition before the Commissioner of Survey, Settlements and Land Records, A.P., Hyderabad under sub-section (1) of Section 56 of the Act as an authority to whose control the powers exercisable by a Collector under Chapter IV, Chapter V and under clause (a) of first proviso to Section 26 are, in all cases, subject to the control of the chief Controlling Revenue Authority. This petition was returned informing the petitioner—bank that no revision petition can be entertained under Section 56(1) of the Act against the orders of the District Registrar passed under Section 31 and 32 of the Act.

The Assistant Inspector General (Law) filed a counter stating that the draft lease deed attracts Article 31(a) (iv) (c) & (d) of Schedule I-A to the Act and it has to be calculated on the basis of annual rent, advance paid and also developments undertaken by the lessee—Bank. Taking into consideration the recital of the document, the Collector under the Stamp Act gave opinion that the chargeability of the stamp duty is Rs.1,67,575/- and it is for the bank to submit the document which can be dealt with by the concerned Sub-Registrar in accordance with law.

Section 56 of the Act does not empower the Chief Controlling Revenue Authority to exercise any revision powers in respect of Collector's opinion under Section 31, which forms part of Chapter-III of the Act and any powers exercised by the Collector under Chapter-III are not subject to the control of Chief Controlling Revenue Authority under Section 56 of the Act.

It was urged by the learned counsel for the petitioner that against every order passed by the Collector under the Act the petitioner has a right to file revision to the Chief Controlling Revenue Authority who will exercise control over the Collector as superior authority can revise the order under the Act. The Commissioner without affording an opportunity of being heard to the petitioner returned the revision as not maintainable, which is in contravention of provisions of the Act.

Learned Government Pleader for Revenue while reiterating the stand taken in the counter contended that since adjudication do not fall under Section 31 of the Act, no revision lies to the Chief Controlling Revenue Authority. Since revision is not maintainable which can always be returned and hearing at that stage does not arise.

Reliance was placed by the learned counsel for the petitioner on the decision of the Madras High Court in ***AMMA STORES v. COLLECTOR*** and decision of the Supreme Court in ***TRIDESHWAR DAYAL v. MAHESHWAR DAYAL***

At this stage we can touch lightly on the facts and decision in those cases.

In the decision 1st cited, when certain documents executed by the petitioner therein on 25-10-1953 described as an agreement to be produced before the Registrar of Trade Marks for the purpose of transferring the trade marks, the Registrar was of the opinion that the document in question was really a sale deed and sent it to the Collector of Madras for impounding. On receipt of the document, the Collector of Madras construed the terms of the document and came to the conclusion that it was a sale deed and not a mere agreement and accordingly levied the deficit stamp duty in addition to penalty to be paid. Aggrieved against the decision petitioner filed appeal before the Board of Revenue under Section 56 of the Act. The Board of Revenue in an elaborate order came to the conclusion that the levy of stamp duty and penalty by the Collector was proper and dismissed the appeal, which was subject matter of challenge in the writ petition. The Madras High Court after stating that the Chief Controlling Revenue Authority whose appellate power invoked by the petitioner ought to have given the petitioner an opportunity for making a personal representation, especially, since in his appeal petition, he had specifically asked for that relief. The Board of Revenue disposed of the appeal excluding the specific request made by the petitioner that he should be heard, there was non-compliance

of the principles of natural justice. The learned judge who heard the writ petition after placing reliance on the decision of the Supreme Court in ***BOARD OF REVENUE v. VIDYAWATI*** and the decision of the Madras High Court in ***ANNAMALAI AND CO. v. DISTRICT REGISTRAR*** upheld the contention put forward by the petitioner holding that once the power of Chief Controlling Revenue Authority is invoked by the aggrieved party under Section 56(1) and if thereafter, that authority proceeds to exercise that power, it must also be viewed as the exercise of a quasi-judicial, whether that power is exercised at the instance of the aggrieved party or the instance of the Revenue. In the present case, the Chief Controlling Revenue Authority has taken up the application of the party for disposal as an "appeal" against the orders of the Collector. It has written out an elaborate order canvassing the grounds set out by the party in his "petition of appeal". From the circumstances of the case, it has to be held that what was exercised by the Chief Controlling Revenue Authority in this case was not an administrative function, but a quasi-judicial function invoked for the purpose of modifying the orders of the Collector in favour of the aggrieved party. In such a case, it is clear that the authority has to act quasi-judicially, just as in the case under Section 56(2). This carries with it an obligation to give opportunity when a large amount of duty and penalty is involved. In the present case, the party himself has also asked for a personal hearing in his memorandum of appeal. For the aforesaid reasons, I am of the opinion that the requirements of natural justice had to be followed in this case where the Chief Controlling Revenue Authority was requested by the aggrieved party to interfere in a quasi-judicial capacity. Accordingly, the order passed by the Chief Controlling Revenue Authority was set aside and matter was remitted to the Chief Controlling Revenue Authority with a direction to restore the file to its file and dispose it of after giving an opportunity to the petitioner for a personal hearing.

In the case of ***TRIDESHWAR DAYAL*** (2 supra) a dispute between the parties was referred to the Arbitrator, who made an award and filed the same before the civil court for making it a rule of the court. The civil court made the award as rule of the court, which was confirmed by the High Court in regular first appeal. The special leave petition filed against the same was dismissed and the prayer for review was also rejected. In the meantime, respondent therein applied before the Collector for summoning the award and realizing the duty and penalty. The said prayer was opposed by the appellant but was allowed by the Collector and on a request made to the civil court for sending the award, the civil court asked for sending the award,

the civil court asked the office to do so. Thereafter, the appellants moved the Chief Controlling Revenue Authority under Section 56 of the Act against the Collector's order. The Chief Controlling Revenue authority in exercise of its revisional power set aside the order of the Collector, inter alia, on the ground of lack of jurisdiction and on challenge the High Court allowed the writ petition at the instance of the respondent remanding the matter to the collector to decide the case afresh as per the observations. The High Court doubted the power of the Chief Controlling Revenue Authority to entertain the revision under Section 56 of the Act. On appeal against the said order of the High Court, the Supreme Court upheld the submission made by the learned counsel for the respondent therein, namely, concluding portion of the order of the civil court, directing the impounding of the award and sending it to the Collector for necessary action and further steps in compliance of the order were not taken promptly and it was the respondent who drew the attention on the said aspect, but it cannot be legitimately suggested that as the reminder for implementing the order came from the respondent, who was motivated by a desire to salvage the situation to his advantage, further steps could not be taken. Accordingly, the order passed by the Collector was upheld. In the circumstances, the order passed by the Collector be held to have been passed as the follow up steps in pursuance of the civil court's direction and no valid objection can be taken against them.

Both the cases on which much reliance was placed by the learned counsel for the petitioner are misplaced to the facts of present case. In both the decisions, the case considered was a case in respect of a power exercised under Chapter IV/Section 33 of the Act, so the control of Chief Controlling Revenue Authority was attracted by sub-section (1) of Section 56 of the Act thus conferring on it a power of revision. Nothing was said in either as to whether adjudication by Collector under Section 31, and the endorsement of certificate by him under Section 32, which do come within the scope of section 56(1) could be revisable.

I n ***GOVT. OF UTTER PRADESH v. MOHD. AMIR*** the Supreme Court had an occasion to consider the scheme of the Act under Sections 31, 32 and 33 and observed that where a person is simply seeking opinion of the collector as to the proper duty in regard to an instrument, he approaches him under Section 31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up

the duty and under Section 32 the Collector will then make an endorsement and the instrument will be treated as if it was duty stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable, then, no consequence will follow, and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes *functus officio* and the provisions of Section 33 have no application. *Thus it is obvious that Collector could not impound the instrument under Section 33 and consequential proceedings could not, therefore be, taken. (emphasis is of mine).*

The Supreme Court in the above judgment further held that the language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to the those instruments are the same, that it, when he is asked to give his opinion, he has to determine the duty with which, in his judgment the instrument is chargeable and there his duties & powers in regard to that matter end. Then follows Section 32. Under that Section the Collector has to certify by endorsement on the instrument brought under Section 31 that full duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the endorsement can be made only if the instrument is presented within a month of its execution.

Nothing on record to show, on such determination of proper stamp duty with regard to the lease deed, the Bank has got executed the document and submitted for its registration or wanted to proceed with effectuating the document, with a request to make up the duty and for endorsement by Collector on the instrument and for issuance of a certificate to the said effect. If the Bank is so sure that the opinion of the Collector as to the proper duty leviable on the instrument is not justified and is prepared to take the risk, it can ignore the Collector's determination leaving the matter to be agitated, should occasion arise, under the provisions of Chapter-IV or Chapter-VII. It does not appear that the Collector's determination under Section 31 is binding or even relevant in such proceedings.

Chapter-IV of the Act, which deals with instrument not duly stamped, and which contains Sections 33 to 48, provides for impounding of documents, how the impounded documents are dealt with, Collector's powers to stamp instruments

impounded and how the duties and penalties are to be recovered. Sub-section (1) of Section 56 confers on Chief Controlling Revenue Authority control in respect of certain specified powers exercisable by Collector under Chapter-IV, Chapter-V and under Cl.(a) of First proviso to Section 26 of the Act. The word “exercisable” is wide enough to include what has been exercised in the past as also what is to be exercised in future. But the power exercised by the Collector in the present case is not one of the powers specified in sub-section (1) of section 56 as subject to control of Chief Controlling Revenue Authority and it follows that, as held by Chief Controlling Authority, he has no power of interference whatsoever with the decision of the Collector which is final so far as the Act is concerned. Therefore, it is not possible to uphold the plea that when the order of Collector does not provide for an appeal the Chief Controlling Revenue Authority can exercise revision under sub-section (1) of Section 56 of the Act. Section 56 do not cover the acts which are fall within the scope of section 31 because that section is complete by itself and it ends by saying that Collector shall determine the duty with which in his judgment the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. If the Collector so chooses and entertains any doubt as to the amount of duty with which instrument is chargeable, he may draw up a statement of the case and refer it with his own opinion thereon for the decision of the Chief Controlling Revenue Authority under sub-section (2) of section 56. Only in case where the collector made such a reference, the petitioner will have a right of hearing before determination of stamp duty payable to the Chief Controlling Revenue Authority. In other words, the right of hearing will arise only if a revision lies to the Chief Controlling Revenue authority under Section 56 against the order passed by the Collector under Chapter III, on a reference made by the Collector under sub-Section (2) of Section 56 but not otherwise. The section is properly inserted under “*Adjudication as to Stamps*”. The only remedy left open to the petitioner is to challenge the adjudication made by the Collector under Sections 31 and 32 of the Act by filing a writ petition but not by way of revision, since no remedy is provided against the said order under the Indian Stamp Act.

In view of the same and for the reasons aforementioned, no infirmity is discernable from the order passed by the Chief Controlling Authority returning the revision *as not maintainable*. Therefore, no mandamus as prayed can be issued directing the Chief

Controlling Authority to take on record the revision filed by the petitioner and to dispose of the same.

The writ petition fails and it is accordingly dismissed. No costs.

_____ A.GOPAL REDDY, J.

18-01-2005

Murthy/Kmr

LR Copy to be marked

ASSISTANT REGISTRAR

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SECTION OFFICER

To

One fair copy to the Honourable Mr. Justice A.Gopal Reddy (For His Lordship's kind perusal.

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